

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUCAS PARKER, ¹	§
	§ No. 700, 2010
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for New Castle County
EILEEN PARKER,	§ File No. CN03-10758
	§ Petition Nos. 09-24900
Petitioner Below-	§ 09-27086
Appellee.	§

Submitted: April 15, 2011
Decided: May 24, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 24th day of May 2011, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The respondent-appellant, Lucas Parker (the “Father”), filed an appeal from the Family Court’s September 29, 2010 order assessing attorney’s fees and costs against him. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that the Father and petitioner-appellee Eileen Parker (the “Mother”) are the parents of James Parker, born

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated November 1, 2010. Supr. Ct. R. 7(d). In this Order, we also assign pseudonyms to the minor children of the parties.

on October 30, 2000, and Linda Parker, born on July 9, 2003 (collectively, the “children”). The Mother has primary residential custody of the children and the Father has visitation pursuant to a consent agreement dated June 12, 2007. The Mother resides in Delaware and the Father resides in Georgia. On July 12, 2009, the Father returned to Delaware with the children after visitation with them in Georgia. He went to Delaware State Police Troop 2, where James was interviewed by an officer concerning abuse allegedly perpetrated by the Mother. Following the interview, the officer called the New Castle County police. The New Castle County police arrested the Mother on three criminal charges stemming from the abuse allegations and a no-contact order was issued against her. The Father returned to Georgia with the children the next day.

(3) On July 27, 2007, the Mother’s criminal case was bound over to New Castle County Superior Court. On the same day, at the recommendation of the Division of Family Services (“DFS”) and without objection from the Office of the Attorney General, the “no-contact” order was amended to “no-unlawful contact.” The Mother contacted the Father in Georgia about the amended order, but the Father refused to allow her to speak with the children. On July 28, 2007, the Mother filed a petition for a rule to show cause in the Family Court requesting that the Father be held in

contempt for failing to allow her contact with the children and for failing to return the children to Delaware. The Family Court granted the motion *ex parte* on July 29, 2009.

(4) A hearing was held in the Family Court on August 7, 2009 to address the Mother's motion. The Father was duly contacted, but did not appear. Rather, he hired a Delaware attorney, who participated in the hearing by telephone. The Father's Delaware attorney advised the Family Court that the Father had hired a Georgia attorney and had filed an action in Georgia Juvenile Court, which was scheduled for a hearing. The Family Court made clear that it had not surrendered jurisdiction over the matter, since the Mother still resided in Delaware. A representative from DFS testified that there was no support for the Father's claim of abuse and that she recommended return of the children to the Mother. The Family Court then contacted the Father by telephone. The Family Court ordered the Father to return the children by 5:00 p.m. on August 8, 2009 or be fined \$100 for each day he was in contempt of the Family Court's order. The Father did not comply with the Family Court's order.

(5) The hearing went forward in the Georgia court on August 10, 2009, as scheduled. As a result, the Mother made arrangements to travel to Georgia, hired Georgia counsel and attended the hearing. The Father's

Georgia petition was dismissed on the ground that Delaware had jurisdiction over the parties' custody and visitation matters. The Georgia judge turned the children over to the Mother and entered an order directing the sheriff of Fulton County, Georgia, to assist the Mother in removing the children, should that be necessary. The Mother then returned with the children to Delaware. The custody and visitation issues were finally resolved at a hearing in the Family Court on August 13, 2010, which resulted in an order docketed on September 2, 2010. The order gave the Mother leave to file a motion for attorney's fees and costs in connection with traveling to Georgia to defend against the Father's claims.

(6) On September 15, 2010, the Mother filed a motion for attorney's fees and costs, with affidavits of her Delaware and Georgia counsel attached. The Mother requested reimbursement in the amount of \$12,001.78. The Family Court disallowed certain of the requested expenses and, by order dated September 29, 2010, determined that attorney's fees and costs were owed to the Mother in the amount of \$8,973.38.

(7) In this appeal from the Family Court's order awarding attorney's fees and costs to the Mother, the Father claims that a) it was necessary for him to initiate the action in Georgia in order to protect the children from abuse; b) it was necessary for him to remain in Georgia in

order to attend the hearing; and c) he has insufficient income to reimburse the Mother for her attorney's fees and costs.

(8) The Family Court has discretion to award counsel fees and costs after considering a) the legal and factual basis for the action of the party resulting in the award of fees and costs; b) the result of the action; c) the relative financial resources of the parties; and d) such other factors as the Family Court "deems just and equitable."² When awarding counsel fees and costs, the Family Court must cite record support for its reasoning and conclusions.³

(9) We have reviewed the Family Court's September 29, 2010 order. We find that the Family Court adequately addressed all of the necessary statutory factors, fully supported its reasoning and conclusions, and acted well within its discretion in awarding attorney's fees and costs to the Mother in the amount of \$8,973.38. We find the Father's claims to be meritless. In the absence of any legal error or abuse of discretion, the judgment of the Family Court must be affirmed.

² Del. Code Ann. tit. 13, § 731.

³ *Smith v. Francisco*, Del. Supr., No. 230, 2000, Berger, J. (May 16, 2001).

NOW, THEREFORE, IT IS ORDERED that the judgment of the
Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice